the plaintiff was a passenger should have been submitted to the jury with proper instructions.

The authorities declare that in order to create the relation of carrier and passenger, there must be an offer by the person to take passage and an acceptance of him by the carrier. *Hogner v. Boston El. R. Co.* (1908) 198 Mass. 260; *Devine v. Chi. City Ry. Co.* (1911) 162 Ill. App. 243. But the acceptance may be implied from slight circumstances. *Kane v. Cicero Proviso Electric Ry. Co.* (1902) 100 Ill. App. 18. If the car slows down in response to a signal from a bystander and the car is boarded while in motion, the one so boarding is a passenger and may recover for an injury then received because of the negligence of the company. *O'Mara v. St. Louis Transit Co.* (1903) 102 Mo. App. 202; *Nolan v. Metropolitan St. Ry. Co.* (1913) 250 Mo. 602. The act of stopping a car at a customary place is an implied acceptance of those waiting to enter. *Hull v. Terre Haute Electric Co.* (1905) 38 Ind. App. 43. Under such circumstances it is not necessary that the party should be seen. An effort has been made to distinguish such a case from one where a moving car is boarded without the knowledge of the company on the ground that it would be impossible to recognize all who might desire to enter. *Schepers v. Union Depot Ry. Co.* (1895) 126 Mo. 665. In the principal case the entry was made when the car was in motion and without the knowledge of the conductor, with the intention of paying the fare. If we adopt the fiction that stopping the car is an invitation to enter, we might carry it one step farther and hold that running cars through the city streets carries a similar invitation, provided a safe entrance is made and there are no rules of the company against getting on while the car is moving. Public policy dictates that the plaintiff should be considered a passenger and not a trespasser, the only alternatives, even though this is accomplished with some loss to strictly logical analysis.

J. E. H.

CHATTEL MORTGAGES—RENEWAL—NOVATION—LOSS OF PRIORITY.—FOY-ADAMS CO. V. SMITH (1917) 91 S. E. (GA. APP.) 242.—The plaintiff company sold certain chattels to one Tatum taking his purchase money note for the amount due, by the terms of which title was reserved in the plaintiff until payment of the debt. At a later date more chattels were sold to Tatum, the old note was cancelled and a new note taken covering both the amount of the old note and the value of the new purchase, title to all the chattels being expressly reserved in the plaintiff. Between the dates of the two notes the defendant became a purchaser for value of part of the property covered by the original note. For the conversion of that part the plaintiff brought this action. *Held,* that there was a novation which divested the title of the plaintiff as against the defendant.

Conditional sales of chattels have been frequently considered as chattel mortgages, at least in their general effect. Williston, *Sales,* sec. 579; Mechem, *Sales,* sec. 578. It is the generally accepted rule that a new mortgage on the same property and on generally the same terms as a

former mortgage is not a novation and does not forfeit priority as to intervening mortgagees or purchasers with notice. *Howard v. First National Bank of Hutchinson* (1890) 44 Kan. 549; *Hardin v. Elkus* (1898) 24 Nev. 329. This rule was recognized by the Georgia court. It is clear that the vendor could have preserved his position and precedence by keeping the two transactions separate, a mortgage for each. Shall he be penalized for merging the two without otherwise changing the terms of either? The outstanding objection to permitting it seems to be that such permission might sanction wilful "sweetening" of poor security by combining it with good security in one later mortgage at the expense of an intermediate mortgagee. The answer to such an objection in the absence of fraud is probably found by holding the property conveyed to the sub-vendee subject only to the encumbrance which it originally bore—the same as would have continued if no renewal had been granted. *Mayers v. McNeese* (1902) 71 S. W. (Tex. Civ. App.) 68. But after all, a conditional sale is not strictly a chattel mortgage. Williston, *Sales,* sec. 337; *Nichols v. Ashton* (1892) 155 Mass. 205; *Puett v. Edwards* (1915) 17 Ga. App. 645. And especially is this distinction to be noted since Georgia by statute throws the risk of loss upon a conditional vendor, contrary to the general rule. Ga. Code, sec. 4123; Williston, *Sales,* secs. 303-304. If the vendor bears this added burden, he might reasonably expect some compensating advantages. In the principal case the authorities cited by the court were all concerned with chattel mortgages, and in view of the facts above mentioned, it is submitted that these are not entirely in point. A brief analysis of a conditional sale it is believed will cast some light on the case. The purchaser gets among other things a power to divest the title of the vendor upon payment of the notes. The purchaser from the vendee, taking with notice, does not get legal title but does obtain a similar power to acquire title. It is difficult to see where, aside from fraud, he stands in a more favored position than the original vendee. If, then, the novation in the principal case is regarded as a sufficient performance of the condition of payment to divest the title of the vendor in that portion of the chattels which were resold, why would it not affect the whole lot in the same way? And if the title was ever divested, by what means was it restored to the original vendor? The intention of the parties as expressed by the contract was that title was reserved in the vendor, and this language is hardly susceptible of the interpretation that it was intended to pass and re-pass title as in a mortgage transaction. On the other hand, the result arrived at in the Texas case, *supra,* can probably be reached here without distorting the real intention of the parties. It would seem that the vendee could not, without actually paying the debt, transfer good title to his sub-vendee nor release the chattels from the condition precedent, but that he could and did place beyond his own power the possibility of further incumbering the particular chattels in which he had parted with all his interest.

M. S. B.

CONTRACTS—ASSIGNMENT—PERFORMANCE.—THE ROSENTHAL PAPER CO v. THE NATIONAL FOLDING BOX AND PAPER CO. (1917) 56 N. Y. L. J. 1439.—The plaintiff's assignor, the sole owner of a patent, agreed to give